

Blue Ridge Environmental Defense League

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December 20, 2018

Hon. Mark Herring
Office of the Attorney General
202 North Ninth Street
Richmond, Virginia 23219

RE: Request for injunctive relief on the Mountain Valley Pipeline

Dear Sir:

On behalf of the Blue Ridge Environmental Defense League and its chapters—Piedmont Residents In Defense of the Environment, Preserve Bent Mountain/Roanoke, Preserve Floyd, and Preserve Franklin—I write to request that you seek immediate injunctive relief to halt construction of the Mountain Valley Pipeline.

We are cognizant that the Commonwealth has sued Mountain Valley Pipeline, LLC for relief in the form of compelled compliance with the terms of the 401 Certification and civil penalties. Nevertheless, the state's action falls short of what is required to prevent further harm. The construction must stop unless and until compliance is compelled.

In its action against MVP, the Commonwealth asks the court to compel compliance with site stabilization requirements, and yet additional land disturbance continues at sites across the route. MVP is clearing land and burying pipe even though it is not possible to grow grass this time of year. The company consistently acts in callous disregard of the law even in the face of a lawsuit for the violations. We request that you act to halt construction while the legal actions for violating the law are litigated.

For example, last week MVP worked past 11 p.m., under high intensity lights, on the top of Fort Lewis Mountain with a foot of snow on the ground and two days of rain in the forecast. Not only does working after dark violate the FERC certificate, the continued construction activity can lead only to further non-compliance of the 401 Certification and water quality impacts. Given the continuing threat of harm, you fail the Commonwealth's citizens by neglecting to seek immediate injunctive relief to halt construction.

Further, on December 13, 2018, the State Water Control Board voted to reconsider the validity of the 401 Certification. As you may know, our members and other residents have been presenting evidence to the Board for months that shows that there is, in fact, no reasonable assurance of compliance. Curiously, the DEQ staff discouraged the Board from imposing a stop work order, while it appeared that the Board was ready to both stop work and revoke the permit if it could have done so. The Board's reconsideration of the 401 Certification will be meaningless if MVP continues to violate the Certification.

As the Attorney General, you are dutybound to stop the construction activity that continues to mock the Commonwealth's authority. In addition to moving for injunctive relief, we hereby request that you direct the DEQ to "perform all acts necessary or convenient to carry out the purposes of this chapter" which authority includes acts necessary to compel MVP to stop work, Virginia Code § 10.1-1186.

The state's 401 Certification is effectively void in its fulfillment of terms and conditions. Part V of the 401 Certification relies on mitigation plans to assure the protection of water quality standards. Mitigation plans were offered as a panacea to cure citizen concerns in the certification process. However, the mitigation measures have been proven ineffective, and the Commonwealth's complaint against MVP proves the invalidity of Part V of the 401 Certification.

Part VI of the 401 Certification incorporates the US Army Corps of Engineers 404 permit and the DEQ's general 401 Certification of the federal 404 permit. The state expressly relied on these components to find reasonable assurance, but the Fourth Circuit Court of Appeals vacated the Corps decision to authorize construction under the general 404 permit in West Virginia. Then, in turn, the Norfolk District of the Corps suspended the authorization to construct under the general 404 permit in Virginia. Not only is the federal 404 permit stripped from the MVPs 401 Certification, the DEQ's blanket 401 Certification of the federal 404 also has no effect. The DEQ and the State Water Control Board *lack the grounds for reasonable assurance* as stated in Part VI of the 401 Certification. The stripped 404 components effectively void the 401 Certification on its face.

In conclusion, thousands of citizens told the Commonwealth that MVP could not comply and would not comply. Real harm has occurred to residents; violation of the 401 Certification is not a victimless crime. The only responsible action to take is to halt construction, whether by court injunction, DEQ edict or legal action to void the Certification. We urge you to move the court for injunctive relief forthwith.

Respectfully,



Tammy Belinsky, Esq.
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Of Counsel